

NO. 28976

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

THE ESTATE OF RAYMOND FREITAS, also known as
RAYMOND F. FREITAS, also known as
RAYMOND FRANKLIN FREITAS, SR., Deceased.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(PROBATE NO. 07-1-0140)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Recktenwald, C.J., Watanabe and Nakamura, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over the appeal that Petitioners-Appellants Raymond Freitas, Jr., Alan Freitas and Michael Freitas (the Freitas Appellants) asserted from the Honorable Shackley F. Raffetto's December 31, 2007 "Order on Petition for Adjudication of Intestacy and Appointment of Co-Personal Representatives, Filed September 4, 2007" (the December 31, 2007 intestacy order) because the December 31, 2001 intestacy order is not an appealable judgment or appealable order pursuant to Hawaii Revised Statutes (HRS) § 641-1(a) (1993 & (Supp. 2007) and Rule 34 of the Hawaii Probate Rules (HPR).

HRS § 641-1(a) (1993 & Supp. 2007) authorizes appeals from "final judgments, orders, or decrees[.]" HRS § 641-1(a) (1993 & Supp. 2007). HPR Rule 34(a) further requires the probate court to reduce an order of intestacy to a separate judgment as a prerequisite for appealability:

CLERK, APPELLATE COURTS
STATE OF HAWAII
KORIMAI YARA

2008 JUN 26 AM 8:23

FILED

**RULE 34. ENTRY OF JUDGMENT, INTERLOCUTORY ORDERS,
APPEALS**

(a) Entry of Judgment. All formal testacy orders, orders of intestacy and determination of heirs, orders establishing conservatorship and/or guardianship, and orders establishing protective arrangements shall be reduced to judgment and the judgment shall be filed with the clerk of the court. Such judgments shall be final and immediately appealable as provided by statute. Any other order that fully addresses all claims raised in a petition to which it relates, but that does not finally end the proceeding, may be certified for appeal in the manner provided by Rule 54(b) of the Hawai'i Rules of Civil Procedure.

(b) Interlocutory Orders. In order to appeal from any other order prior to the conclusion of the proceeding, the order must be certified for appeal in accordance with Section 641-1(b) of the Hawai'i Revised Statutes.

(c) Final Judgment Closing Proceeding. At the conclusion of the proceeding, a final judgment closing the proceeding shall be entered and filed with the clerk of the court, at which time all prior uncertified interlocutory orders shall become immediately appealable.

(d) Appeals. Final judgments as to all claims and parties, certified judgments, certified orders, and other orders appealable as provided by law may be appealed pursuant to the Hawai'i Rules of Appellate Procedure applicable to civil actions.

HPR Rule 34 (emphases added). The probate court has not reduced the December 31, 2007 intestacy order to a judgment, as HPR Rule 34(a) requires. Nor has the December 31, 2007 intestacy order been certified for appeal in the manner provided by Rule 54(b) of the Hawai'i Rules of Civil Procedure, as HPR Rule 34(a) requires. Therefore, the December 31, 2007 intestacy order is not appealable pursuant to HPR Rule 34 and HRS § 641-1(a) (1993 &

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Supp. 2007). Absent an appealable judgment or appealable order, we lack appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 26, 2008.

Muhammad

Chief Judge

Corinne K A Watanabe

Associate Judge

Cynthia M. Nekama

Associate Judge